

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3

4 UNITED STATES OF AMERICA,
5 Plaintiff

6 v.
7 CRIMINAL 05-0150 (JAG)
8 [2] MELISHA MEDINA,
9 Defendant

10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
11 RE: RULE 11 PROCEEDINGS (PLEA OF GUILTY)

12 I. Personal Background

13 On May 5, 2005, Melisha Medina, the defendant herein, was charged in counts
14 one and three of a three-count indictment. The defendant agrees to plea guilty to
15 counts one and three. Count one charges that defendant, along with co-defendants,
16 did knowingly and intentionally combine, conspire, and agree with one another to
17 commit an offense against the United States, to wit: to possess with the intent to
18 distribute 100 grams or more of a mixture or substance containing a detectable
19 amount of heroin, specifically 575 grams (gross weight) of heroin, a Schedule I
20 Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846.

21 Count three alleges that on or about April 25, 2005, in the District of Puerto
22 Rico and elsewhere within the jurisdiction of this court, the defendant herein, did
23 knowingly and intentionally import into the United States from a place outside
24 thereof, that is, the Dominican Republic, 100 grams or more of a mixture or
25 substance containing a detectable amount of heroin, specifically 289 grams (gross
26 weight) of heroin, a Schedule I, Narcotic Drug Controlled Substance, in violation of
27 21 U.S.C. § 952(a).

28 Defendant filed a motion for change of plea on September 30, 2005.

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3 II. Consent to Proceed Before a Magistrate Judge

4 Yesterday, while assisted by Juan José Hernández López de Victoria, Esq., the
5 defendant, by consent, appeared before me in order to change her previous not
6 guilty plea to a plea of guilty as to counts one and three of the indictment.

7 In open court the defendant was questioned as to the purpose of the hearing
8 being held. The defendant responded that the purpose of the hearing was to plead
9 guilty. The defendant was advised of her right to have all proceedings, including the
10 change of plea hearing, before a United States district judge. Defendant was given
11 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries
12 were to be conducted under oath and that it was expected that her answers would
13 be truthful (she was also explained that the consequences of lying under oath could
14 lead to a perjury charge); and (c) her right to have the change of plea proceedings
15 presided over by a district judge instead of a magistrate judge. The defendant was
16 also explained the differences between the appointment and functions of the two.
17 The defendant consent to proceed before this magistrate judge.

18 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

19 A. Compliance With Requirements Rule 11(c)(1)

20 Rule 11 of the Federal Rules of Criminal Procedure governs the
21 acceptance of guilty pleas to federal criminal violations. Pursuant to
22 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
23 defendant's right to trial, guilty pleas must be knowing and voluntary:
24 "Rule 11 was intended to ensure that a defendant who pleads guilty
25 does so with an 'understanding of the nature of the charge and
consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
(1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
(1969)). [There are three core concerns in these proceedings]: 1)
absence of coercion; 2) understanding of the charges; and 3) knowledge
of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
Cir. 1991)).

27 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).
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In response to further questioning, defendant was explained and she understood that if convicted on count one of the indictment, she was exposed to a term of imprisonment of up to 40 years with a minimum of five years, a fine not to exceed \$2,000,000, and a term of supervised release of at least four years.

As to count three defendant was explained and she understood that if convicted she was exposed to a term of imprisonment of up to 40 years with a minimum of five years, a fine not to exceed \$2,000,000, and a term of supervised release of at least four years.

She was further explained that the court must also impose a mandatory penalty assessment of \$100 per count, to be deposited in the Crime Victim Fund, pursuant 18 U.S.C. 3013(a).

Defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon her, she later could not withdraw her guilty plea if she was unhappy with the sentence of the court. The defendant understood this.

Defendant was explained what the supervised release term means. It was emphasized that cooperation with the United States Probation officer would assist the court in reaching a fair sentence.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to her.

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of her rights, defendant was advised of her right:

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1. To remain silent at trial and be presumed innocent, since it is the
2 government who has the burden of proving her guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no comment could be made by
3 the prosecution in relation to her decision not to testify.

3. To a speedy trial before a district judge and a jury, at which she would be
4 entitled to see and cross examine the government witnesses, present evidence on her
5 behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which
5 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
6 of competent evidence.

5. To use the subpoena power of the court to compel the attendance of
6 witnesses.

Upon listening to the defendant's responses, observing her demeanor and her
speaking with her attorney, that to the best of counsel's belief defendant had fully
understood her rights, it is determined that defendant is aware of her constitutional
rights.

C. Consequences of Pleading Guilty

Upon advising defendant of her constitutional rights, she was further advised
of the consequences of pleading guilty. Specifically, defendant was advised that by
pleading guilty and upon having her guilty plea accepted by the court, she will be
giving up the above rights and would be convicted solely on her statement that she
is guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty
she would not be allowed later on to withdraw her plea because she eventually might
disagree with the sentence imposed, and that when she were under supervised

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release, and upon violating the conditions of such release, that privilege could be revoked and she could be required to serve an additional term of imprisonment. She was also explained that parole has been abolished.

D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

Defendant acknowledged having understood this explanation. Defendant complies with the safety valve provisions.

E. Government's Evidence (Basis in Fact)

The government presented a proffer of its evidence with which the defendant concurred. Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offenses charged.

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3 F. Voluntariness

4 The defendant accepted that no leniency had been promised, no threats had
5 been made to induce her to plead guilty and that she did not feel pressured to plead
6 guilty. She came to the hearing for the purpose of pleading guilty and listened
7 attentively as the prosecutor outlined the facts which it would prove if the case had
8 proceeded to trial.

9 IV. Conclusion

10 The defendant, by consent, has appeared before me pursuant to Rule 11,
11 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to counts
12 one and three of the indictment.

13 After cautioning and examining the defendant under oath and in open court,
14 concerning each of the subject matters mentioned in Rule 11, as described in the
15 preceding sections, I find that the defendant Melisha Medina is competent to enter
16 this guilty plea, is aware of the nature of the offenses charged and the maximum
17 statutory penalties that the same carry, understands that the charges are supported
18 by the government's evidence, has admitted to every element of the offenses charged,
19 and has done so in an intelligent and voluntary manner with full knowledge of the
20 consequences of her guilty plea.

21 Therefore, I recommend that the court accept the guilty plea of the defendant
22 and that the defendant be adjudged guilty as to counts one and three of the
23 indictment.

24 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
25 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
26 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
27 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
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3 objections to the report and recommendation is a waiver of the right to review by the
4 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

5 At San Juan, Puerto Rico, this 3d day of November, 2005.

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8 S/ JUSTO ARENAS
9 Chief United States Magistrate Judge
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